IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 6-12-1995.

CRIMINAL APPEAL NO. 899 OF 1987

For Approval and Signature:

THE HON'BLE MR. JUSTICE A.N. DIVECHA

And

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of Judgment ?

4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

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Shri P.M. Vyas, Advocate for the appellant.
Shri S.T. Mehta, Additional Public Prosecutor for the opponent.

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Coram: A.N. Divecha,J. & H.R. Shelat,J.
(6-12-1995)

ORAL JUDGMENT: (Per: H.R. Shelat, J.)

Delivering the judgment and order dated 20th November 1987, in Sessions Case No. 147 of 1986 on his file, the then learned Additional Sessions Judge at Surat, convicted the appellant of the offence under Section 302, Indian Penal Code, and sentenced him to life imprisonment, consequent upon which the present appeal has been preferred.

2. In short, it is the case of the prosecution that Ramdas Fojabhai the deceased, was the brother-in-law (Banevi) of the appellant. The deceased was said to have illicit relations with the appellant's wife. As the appellant was under the impression that his wife and the deceased had carnal relations, he was afflicted and chagrined. He had hence developed and ill-bred retaliatory whims. He was therefore hovering as he wanted to get rid of such plaguy unchaste affairs. On 16th June 1986 at 8.30 p.m. at Mubarakpur when the deceased was going to tether his goat in the house of Emlo the appellant armed with an axe, ran amok on the deceased, and by axe-blows he caused fatal injuries to the deceased to which he succumbed on the spot. The appellant on being advised by the police-patel went to the police station and lodged the complaint. The police officer of Nizar police station took the investigation on hand. At the conclusion of investigation, he filed the chargesheet against the appellant in the Court of the Judicial Magistrate, (First Class) at Nizar for the offence under Section 302, I.P.C. As the learned Magistrate was not competent to hear and decide the case he committed the same to the Court of Sessions at Surat, which came to be numbered as Sessions Case No.147 of 1986. The then learned Sessions Judge at Surat assigned the case to the then learned Additional Sessions Judge, Surat for hearing and disposal in accordance with law. The charge against the appellant was framed at Exh.2. When it was explained, the appellant pleaded not guilty and claimed to be tried. The prosecution then led necessary evidence. Considering the evidence on record and the rival submissions, the then learned Additional Sessions Judge at Surat held the appellant guilty and sentenced him as aforesaid. It is against that order of conviction and sentence, the present appeal is before us.

3. Mr. P.M. Vyas, learned Advocate representing the appellant, submitted that the lower Court fell into error in appreciating the evidence and convicting and sentencing the appellant. Though all the witnesses could not see the incident, the learned Judge misread the evidence and drew himself to a wrong direction. He also misconstrued the evidence of Bajirao recorded at Exh.16 and adopting a prejudicial approach, he reached the conclusions not at all in consonance with law. Mr. Mehta, the learned Additional Public Prosecutor, made a lame attempt before us so as to convince that the learned Judge was right in all respects while appreciating the evidence, reaching the conclusion, and holding the appellant guilty.

4. A perusal of the evidence implants in our minds clearly that the learned Judge has committed errors both of law and fact, accusations made are not at all free from doubts, and the charge against the appellant is not established beyond every reasonable doubt. Sustaben Ramdas is the widow of the deceased. She has

been examined at Exh.13. Ranjuben Ramdas is the daughter of the deceased whose evidence is recorded at Exh.14. Sanjay, the son of the deceased figured at Exh.15. All the three witnesses who are alleged to have seen the incident have made the statements supporting the case of the prosecution. Their evidence however cannot be accepted. In the later part of their deposition what is made clear is that Sustaben was cooking in the house, Ranjaben was helping her while Sanjay was beside both the mother and the sister in the kitchen. Hearing the shouts they all went out, and could see the deceased lying on the ground in bleeding condition. Before they went out of their house hearing the shouts, the appellant had run away. Their assertion of having seen the appellant giving axe blows to the deceased i.e. their versions of witnessing the incident, is therefore not credible. They could merely see the deceased lying wounded and dead on the ground.

5. Mr. Mehta, the learned Addl. Public Prosecutor, has emphasised much on the confessional statement alleged to have been made by the appellant before Bajirao Jadavbhai whose evidence is recorded at Exh.16. What appears from his evidence is that the appellant met him near the bank of the village pond with the axe in his hand and informed him ironically that he killed a goat, and then on being asked to be clear, he told that he killed Ramdas Fojiya by giving axe blows. This witness then advised him not to run away, but to go to the police station and surrender. The appellant then went to the police station, surrendered himself to the police and also gave the complaint. Thus no doubt a confessional statement was made, but we are not inclined to accept the same and base our conclusion thereon. It may be stated that Bajirao Jadavbhai is the police patel of the village. Whether a confessional statement made by the accused before the police patel is admissible in evidence is required to be examined. Section 25 of the Indian Evidence Act interdicts against admissibility of the confessional statement made to a police officer. Whether the police patel of a village is a "police officer" within the meaning of the words "police officer" appearing in Section 25 of the Indian Evidence Act, is the point that now arises for consideration. We are of the view that the words "police officer", appearing in Section 25 of the Indian Evidence Act carry the same meaning as they in the Police Act, but it can be extended beyond the definition given in the Police Act to cover also those persons who like police officers coming within that definition are much more so interested in obtaining the conviction and they exercise the same powers as that of the police officer of the police station in respect of the investigation. The powers of the police patel are regulated by the Bombay Village Police Act No.VIII of 1967. The police patel of the village has to furnish the written information called for and keep constantly informed as to the state of crimes and all other matters connected with the village police. He can

therefore be termed as the police officer within the meaning of the words "police officer" appearing in Section 25 of the Evidence Act. Our view is fortified by few binding decisions. As back as in 1892, the question arose before the High Court of Bombay in the case of Queen-Empress v. Bhima-I.L.R. XVII Bombay 485 wherein discussing relevant provisions it is held that the police patel is a "police officer" within the meaning of Section 25 and 26 of the Indian Evidence Act, and a confession if made to a police patel is inadmissible in evidence. Thereafter, a similar question arose before this Court in the case of, Amarsingh Gija vs. The State of Gujarat, 1980 Criminal Law Journal (Guj) 154, wherein a similar view has been taken in words couched as follows;

> "The words 'Police Officer' used in Section 25 of the Indian Evidence Act are to be very widely construed and that a Police Officer would remain a Police Officer whatever may be his other capacity. A Police Patel exercising statutory powers under the provisions of the Bombay Police Act is a Police Officer within the meaning of Section 25 of the Indian Evidence Act."

Then again the question arose before this Court in the case of Sukhabhai alias Sukha Dhamjibhai Chaudhary vs. The State of Gujarat-1985 G.L.H. 882, wherein also it is held that the Police Patel of the village is the police officer within the meaning of Section 25 of the Indian Evidence Act and the confession made before him is inadmissible in evidence. Incidentally, while dealing with the questions raised in the case of Sainik Kanaiyalal Kalumal v. The State-1962 (3) G.L.R. 739, this Court had the occasion to deal with the point, and it is observed that the police patel of a village is a member of the village police force and therefore he is a member of the statutory police force by the statute itself. Thus, the law made clear on different occasions in past unequivocally clarifies that the police patel of a village is covered within the ambit of the words "police officer" appearing in Section 25 of the Evidence Act, and so a confessional statement made to him by the accused is inadmissible in evidence. The confessional statement made by the appellant before Bajirao Jadavbhai being inadmissible in evidence cannot be taken into account. The contentions advanced on behalf of the prosecution therefore fails. The learned Judge below has erroneously admitted the same in evidence, and further fell into error by making it to be the foundation of his conclusions; in fact the evidence of Bajirao Jadavbhai is of no value and help to the prosecution.

6. As the confessional statement was inadmissible, so also the complaint lodged by the appellant, the investigating officer ought to have resorted to Section 164, Criminal Procedure Code for getting the confession recorded by the Magistrate, so as to

have additional trustworthy assurance. His omission tarnishes the case about the confessional statement.

7. Facing with such situation, Mr. Mehta, learned Additional Public Prosecutor has submitted that three circumstances on record were sufficient to fasten the appellant with the charge levelled against him. According to Vimlaben Ratilal (Exh.18) she saw the appellant standing with the axe near the dead body of the deceased, soon after she went out of her house hearing the shrieks. After making the statement before Bajirao,the appellant accepting the advice went to the police station and lodged the complaint and thirdly because of incubus and dejection as a result of so called amour between the deceased with his wife appellant in the throes had the only way out to do away with the brawling factor and have happy life again.

8. The circumstances pointed out are not sufficient to connect the appellant with the crime. The circumstantial evidence can help the prosecution only when it is found free from any reasonable doubt, appearing to the conscience of the court leaving even no possible impression of innocence of the accused, but each and every circumstance when individually and collectively proved should lead to the only conclusion that the accused alone and none else is the perpetrator of crime, because suspicion however strong cannot take the place of proof. In the circumstantial evidence there must be no missing link.

9. Simply because a man is seen near the dead body soon after the incident he cannot be involved, for one may, to help the victim or out of inquisitiveness, hearing shouts drawing his attention go to the scene of offence. To save the victim one may even go with some weapon available on hand at home. Further village life style cannot be overlooked. Farmers and other than farmers in the villages keep an axe, a spade,a scythe, a stick, a sickle,a goad and the like in the house as they are useful for domestic use as well as agricultural operations in the field. While going to the field they keep one or another weapon with them. When the circumstance is thus capable of more than one interpretation, it does not satisfy the above stated requirements of the law on circumstantial evidence.

10. Even if the man is innocent but if he feels that there is likelihood of his being roped in because of gesture of some one, prejudices mistaken impression or ill-will, or malignity, he will better considering one's own safety go to the police station and surrender, and may even lodge a complaint on the basis of the information he collected or perceived till then. It is possible that the appellant might have gone to the police station because of one of such grounds. There is nothing on record to know whether the F.I.R. contains inculpatory statement in clear terms. Further Section 164, Criminal Procedure Code is not invoked. Hence the act of the appellant going to the police

station cannot positively be construed against him.

11. No doubt, the prosecution has come out with the case of motive namely so-called illicit relation the deceased was having with the wife of the appellant-accused, but that circumstance alone although of provocative nature as no one would like to be a cuckold and is not sufficient to conclusively prove the guilt because however adequate it may be, it cannot sustain a criminal charge as mere existence thereof is by itself not an incriminating circumstance. Motive is not an ingredient of offence, at the most the evidence of motive is helpful for the purpose of lending assurance to the evidence about commission of the crime and fortifying it. When each and every circumstance on record either individually or collectively does not clearly show that the accused and none else has committed the crime, the evidence of motive alone will not help the prosecution, for the accused cannot be convicted only on the fact of motive at best it raises a very strong suspicion that he may have committed the crime, but suspicion cannot take the place of positive proof. Further the motive has to be proved leading necessary evidence which should be of the strictest kind, it cannot be proved by hearsay evidence. It may be mentioned that motive is a thing which is at times only known to the accused, and at times it may be difficult to establish the same. However the prosecution can satisfy the judicial mind adducing the evidence regarding past events, dealings, conduct, behaviour, action, reaction, gestures of the accused or the concerned person indicating possible breeding of revengeful plan in the mind or other circumstantial evidence throwing light on the proposition.

12. According to Sustaben (Ex.13) the widow of the deceased, because of suspicion about illicit relations between the deceased and his wife,the appellant did the wrong, but what led her to assume so is not elucidated. The belief about the cause may be ill-based. Of course we are aware about the fact that direct evidence of illicit relations, being the affairs in camera is hardly available but one can say about their visits, the time of visit, dealing, conduct and behaviour with others. She states nothing about the deceased's conduct and behaviour with her prior to the incident, or of the appellant and casual talk with the appellant as well. Such statement being weak cannot provide the proof of motive. Sanjay (Ex.15) is silent on the point while Ranjan (Exh.14) does not know why her father is killed. The evidence of Bajirao Jadavbhai (Exh.16) is no better than hearsay evidence. Devram Lalu (Exh.17) states about the cause being illicit relations, but he has not elucidated what made him to believe so. His cousin is the wife of the appellant. At times his cousin because of tiffs used to go back to her natal-house, but he does not know the subject or cause of tiffs. The cause of tiffs or quarrels may be other than illicit-relation. When he has shrewdly remained silent, we cannot jump to the case of

motive alleged. Vimlaben Ratilal (Exh.18) states nothing on the point. There is no other evidence on record, and from other witnesses, knowledge about the illicit-relation cannot be expected. Thus there is no cogent evidence indicating illicit-relations or reason for the accused to reasonably assume about likelihood of unchaste relations. The statements made by the above referred witnesses on the basis of inference, impression, chimera, imagination or conjecture cannot be regarded as proof of illicit relation. It may be stated that many people when hear about relations between a man and a woman, or even their public meetings, they jump to the loose conclusions, or assume or interpret loosely and nastily, and for them every rumour is gospel-truth. On the basis of the above statements made by some of the witnesses, it will not be just, proper, and safe to conclude about illicit-relations and consequently about the same being the motivating factor. In short, there is no satisfactory evidence about motive.

13. Further above discussed two circumstances on which the prosecution relies indicate possibility favouring the appellant, and so they cannot be termed incriminatory. Hence the case of motive even if is accepted cannot probabalise the story of the prosecution and lead us to hold the appellant guilty. In the instant case therefore the circumstances pointed out by Mr. Mehta,the learned A.P.P.,neither individually nor collectively, connote with certainty that the appellant is guilty of the crime; on the contrary these circumstances indicate other possible view favouring the appellant, and hence the contention advanced on behalf of the prosecution gains no ground to stand upon.

14. In view of the matter, the judgment and order of the lower Court cannot be maintained. The appellant is entitled to benefit of doubts. In the result, the appeal is hereby allowed. The judgment and order of the lower court convicting appellant of the offence under Section 302, Indian Penal Code, and sentencing him to life imprisonment in Sessions Case No. 147 of 1986, are hereby quashed and set aside, and the appellant is acquitted of the said charge. He be set at liberty forthwith if no longer required in any other matter.

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